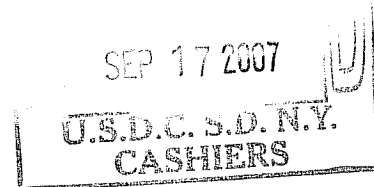


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MATTHEW ALPER,)
)
Plaintiff,)
v.) Civil Action No.
) 07cv2934 (PKC)
)
DEAN HAMER and RANDOM HOUSE, INC.)
)
Defendants.)

SECOND AMENDED COMPLAINT

Plaintiff Matthew Alper, by his attorneys Schweitzer Cornman Gross & Bondell LLP as and for his second amended complaint against the Defendants Dean Hamer and Random House, Inc. pursuant to FRCP Rule 15, hereby alleges as follows:

PARTIES

1. Plaintiff Matthew Alper ("Alper") is an individual residing at 826 President Street, Brooklyn, NY 11215.
2. Defendant Dean Hamer ("Hamer") is an individual with a business address c/o National Institutes of Health, Building 37, Room 6002, 9000 Rockville Pike, Bethesda, MD 20892-4255.
3. Defendant Random House, Inc. ("Random House") is a New York corporation with its principal place of business at 1745 Broadway, New York, NY 10019.

JURISDICTION AND VENUE

4. This court has subject matter jurisdiction over the federal causes of action under 28 U.S.C. §1331; §1338(a); and §2201(a).

5. This court has personal jurisdiction over Random House as, upon information and belief, Random House engages in systematic and continuous activity in the State of New York; transacts business in the State of New York; and has committed acts of infringement complained of herein in the State of New York.

6. Venue is proper in the Southern District of New York under 28 U.S.C. §1391.

Alper's Highly Regarded Work in the Field of Neurotheology

7. Alper is a pioneer in the field of Neurotheology, the study of the genetic and neurophysiological origins of man's spiritual and religious beliefs.

8. In the mid-1990's, Alper conducted extensive research into a possible biological basis for man's belief in a spiritual realm and in god.

9. Alper's research formed the basis of a book he authored *The "God" Part of the Brain* which was first published in 1997 ("Alper's Book").

10. Alper's Book is especially notable because it offered a novel and comprehensive approach to the origin of man's spiritual and religious beliefs from a genetic and evolutionary perspective.

11. Alper theorized in his book that humans are genetically "hardwired" to believe in a spiritual realm and a god or gods. Alper postulated that this "God part of the brain"

evolved in humans as a coping mechanism for the purpose of enabling humans to survive their unique and otherwise debilitating awareness of their own mortality.

12. Alper's Book is a seminal work in the field of Neurotheology and has had a very strong impact on this emerging field of study.

13. Alper is self taught in the field of Neurotheology and is the only expert without a PhD or MD degree to be cited in *Neurotheology*, the first published anthology in the field of Neurotheology.

14. Since the publication of Alper's Book, Alper has received substantial media recognition. Alper has been cited in articles in the Washington Post and New Jersey's Star Ledger. His book was discussed on "Larry King Live" and Plaintiff has been the guest on numerous radio shows including appearances on "Coast to Coast AM with Art Bell", WBAI's "Exploration with Dr. Michio Kaku," Fox News Radio with Alan Colmes, among many others.

15. Alper has delivered numerous lectures in Neurotheology throughout the U.S. including lectures at the University of Minnesota, University of Arizona, and New York University.

16. Alper's Book has been adopted by numerous colleges including Vanderbilt, Union, Mary Washington, Texas A&M, and Pepperdine, as a source for teaching classes in the "Psychology of Religion," "Philosophy of Religion," and "Sociology of Religion." In 2001, a conference was sponsored by Utah State University titled "The 'God' Part of the Brain" which was attended by approximately two hundred college professors.

17. Alper's Book has received recognition and praise from leading scholars in the fields of Neurophysiology, Genetics, and Evolutionary Sciences including William Wright,

Andrew Newberg, Dr. Fuller Torry, and Edward O. Wilson, a two time Pulitzer prize winner and preeminent evolutionary biologist.

18. On June 24, 1997, Alper obtained U.S. Copyright Registration No. TXu-805-559 for the First Edition of Alper's Book.

19. Alper revised Alper's Book and added new work in subsequent editions.

20. The Fourth Edition and Fifth Edition of Alper's Book contain new work not in the First Edition.

21. On May 25, 2007, Alper obtained U.S. Copyright Registration No. TX-6-579-561 for the Fourth Edition of Alper's Book.

22. On May 25, 2007, Alper obtained U.S. Copyright Registration No. TX-6-579-562 for the Fifth Edition of Alper's Book.

23. Alper initially self published his book in paperback in 1997 and promoted the book through media appearances and lectures leading to initial sales of more than 12,000 copies. To date the paperback version of his book has sold approximately 30,000 copies.

24. Alper's Book is presently published by Sourcebook's Inc. in a hardcover edition.

Hamer Obtained Access to Alper's Book and
Announced Plans to Write on the Subject of Neurotheology

25. Defendant Dean Hamer is a geneticist who is the Director of the Gene Structure and Regulation at the U.S. National Cancer Institute (part of the National Institutes of Health). He has a PhD degree from Harvard Medical School.

26. Hamer is the author of several books including *The Science of Desire* and *Living with Our Genes*. Both of these books are about the influence of genes on human behavior.

27. Upon information and belief, on or about the beginning of July 2000, Hamer received a copy of Alper's Book. Prior to accessing Alper's Book, Hamer never mentioned religion or spirituality as part of our genetic heritage in his published works.

28. On July 3, 2000, Hamer, writing for the online magazine slate.com, posted an entry in his "diary" or blog (the "Slate Article") that he was working on a new book tentatively entitled *The God Gene*. A copy of the Slate Article is attached as Exhibit A.

29. In the Slate Article, Hamer copied the main premise of Alper's Book to support his conclusion that there is a neurological basis for the spiritual belief in god. Hamer copied several expressions directly from Alper's Book in the Slate Article.

30. After Alper learned of the Slate Article and was struck by the very strong similarity of several of the expressions in Hamer's Slate Article to those found in Alper's Book, Alper contacted Hamer by e-mail to confirm that Hamer had, in fact, read Alper's Book.

31. In an e-mail dated July 5, 2000 (the "July 5 E-mail"), Hamer stated that "he read [Alper's] book th[at] weekend." Hamer stated that Alper's Book "was very interesting and [he] enjoyed the sense of personal exploration that came through so clearly." Hamer then asked Alper if there have "been any new developments [in the field] you are aware of? I am particularly interested in 'hard' data like brain scans, genetic analyses and so on." A copy of Hamer's July 5 E-mail is attached hereto as Exhibit B.

32. Upon information and belief, while Hamer had previously written extensively about the influence of genes on behavior in his two published books and otherwise, Hamer had never mentioned spirituality or religion as part of our genetic heritage. Upon information and belief, the first time Hamer discussed human spirituality as being influenced by genes was in the Slate Article which was written days after Hamer read Alper's Book.

33. The July 5 E-mail demonstrates that Hamer had read Alper's Book and that he gave it significant attention. It also demonstrates that Hamer was relatively new to this particular field of study, Neurotheology, and recognized that Alper was more knowledgeable of this field at the time Hamer announced his intentions in the Slate Article to publish a book with the identical premise as that of Alper's Book.

Defendants' Infringing Book

34. In 2004, Defendants' Book entitled *The God Gene: How Faith is Hardwired into our Genes* was published by Co-Defendant Random House, Inc.'s Doubleday division (the "Defendants' Book").

35. Defendants' Book was substantially similar to Alper's Book through Defendants' copying many of the expressions in Alper's Book and passing them off as his own original work.

36. Defendants' Book contains a significant number of passages which are substantially similar to or clearly paraphrased from those found in Alper's Book. Moreover, Defendant Hamer copied the unique analysis, style, treatment and characterization of the subject matter contained in Alper's Book. Hamer also

appropriated the general structure of the material in Alper's Book and the general topical sequence.

37. In Defendants' Book, Hamer in many instances copied the specific wording of Alper's expression.

38. Page 132 of the Fifth Edition of Alper's Book contains the following passage:

"More recent estimates propose that the **human genome** is comprised of a much **smaller number** than had **previously been speculated** and is closer to **approximately 34,000 genes as opposed to 100,000.**" (emphasis added).

Page 58 of Defendants' Book copies this passage as follows:

"From the human genome sequence we know that our DNA has roughly **35,000 different genes...**That's a **surprisingly small number**, far fewer than **previous estimates of 50,000 to 150,000.**" (emphasis added).

39. Alper wrote on page 77 of the Fifth Edition of his Book:

"I would like to make the important distinction between two separate human impulses: one of **religiosity**, the other of **spirituality.**" (emphasis added)

Hamer deliberately copied Alper's Book and claims these expressions as his own work on page 10 of Defendant's Book when he wrote:

"One of my biggest challenges in *The God Gene* is to attempt to separate spirituality from religion." (emphasis added)

40. Hamer copied many other specific expressive elements in Alper's Book and incorporated them into Defendants' Book. For instance, in Alper's commentary on the subject matter, Alper created analogies that are unique to Alper's Book and not, by any means, an intrinsic part of this field. Hamer directly copied many of these analogies for his book.

41. On page 169 of the Fourth Edition of Alper's Book, Alper made the

following analogy in discussing humans' reluctance to replace religious beliefs for scientific findings:

"In the past, it was considered a mortal sin to believe that the Earth revolved around the sun. Since such primitive times, science has sent men to the moon and back."

In Defendants' Book, Defendant copied Alper's unique analysis by using the exact analogy to explain the identical idea. On page 209 of Defendants' Book, Defendant wrote:

"In the sixteenth century, the church taught that the sun circled the earth; astronomy proved it to be the other way around." (emphasis added)

42. On page 113 in the Fifth Edition of Alper's Book, Alper used epileptics as evidence of a link between neurophysiology and religious experiences. Alper focused particularly on Dostoyevsky to describe religious feelings experienced by epileptics and wrote as follows:

"Dostoyevsky, who himself suffered this form of epilepsy, offered a description of this experience in his book *The Idiot*: 'I have really touched God. He came into me, myself; yes, God exists, I cried. You all, healthy people can't imagine the happiness which we epileptics feel during the second before our attack.'" (emphasis added).

Defendants copied the same Dostoyevsky analogy to express a similar point. On page 133 of Defendants' Book, Defendant wrote:

"His [Dostoyevsky's] interest in mystical experiences may have resulted from his epilepsy, which is documented in statements by his physicians, several biographies and his own voluminous writings ... " 'You strong people have no idea of the bliss which epileptics experience in the moments preceding their attacks. For several moments, I have a feeling of happiness which I never experienced in my normal state and which one cannot imagine. It is a complete harmony in myself and in the wide world..." (emphasis added).

43. On page 154 of the Fifth Edition of Alper's Book, in characterizing religious behaviors, Alper wrote of Islamic dancing as an example, namely:

"Like the **Islamic whirling dervishes** who **spin** themselves into an **ecstatic frenzy...**" (emphasis added).

In the Defendants' Book, Defendants copied Alper's passage almost verbatim. On page 130 of Defendants' Book, Defendant wrote:

"The **whirling dervishes**, members of the Mevlevi sect of Islam, half chant and half shout the name of **Allah** as they perform their **swirling**, leaping **ecstatic dance.**" (emphasis added).

44. In Alper's Book, to demonstrate the biological basis of spirituality, Alper discussed other behaviors that are a consequence of genes and biology. Alper specifically chose to discuss musical abilities and its association with particular parts of the brain to analyze this topic. Plaintiff's analysis on page 63 of his First Edition is as follows:

"How about the fact that people can suffer from musical aphasia? Just as in the case of a linguistic aphasia, a musical aphasia represents the loss of some specific musical ability a person suffers after having incurred some physical damage to his or her brain. For example, after suffering a stroke, a **composer may lose his or her ability to write music**; a musician, his or her ability to play an instrument." (emphasis added)

Defendant Hamer copied Alper's expression and made a nearly identical analysis utilizing the same analogy chosen by Alper - human musicality - as opposed to the multitude of other human behaviors that are well known to have a genetic basis, to express the same thought with similar wording and structure. Pages 130-131 of Defendants' Book contain the following passage:

"[After suffering a stroke] The Russian composer Vissarion Shebalin, for example, **completely lost his ability** to speak and to understand speech **but kept right on composing.** Even more remarkable is the fact that individuals who have **lost their**

musical ability continue to show an emotional response to music. One woman, whose brain was damaged during surgery, **became musically incompetent**. She could **no longer sing or even recognize a simple tune** like "Mary Had a Little Lamb." (emphasis added).

45. Defendants' Book has passages where Alper's writing style was copied by closely copying or paraphrasing Alper's expressions and merely changed one element to avoid a verbatim copying of Alper's expression.

46. On p. 167 of the First Edition of Alper's Book, Alper provides his own viewpoint on the negative consequences of religion as follows:

"Perhaps if we could learn to objectify our primal spiritual instincts in such a way, we would be able to curb those destructive impulses which have launched our species **into a historical cycle of repeated religious wars. How many more times must we justify acts of aggression, cruelty, and genocide in the name of God and religion before we learn to tame this destructive impulse in us?"**

Hamer copied this passage at page 215 of Defendants' Book:

"Historically, religion has at times helped to usher in wars, crusades, and jihads...Are we condemned [sic] to endlessly repeat the sad mistakes of the past?" (emphasis added).

47. On page 81 of the Fifth Edition of Alper's Book, Alper discussed skepticism as follows:

"[T]hough there is no physical evidence to confirm the existence of a spiritual reality, every culture has believed in one. This is rather unusual for a species of skeptics as ourselves. Generally speaking, human beings tend to believe only what their physical senses reveal to them. Unless we can **see, feel, taste, smell, or touch something, we tend to be dubious of its existence.**" (emphasis added).

Hamer used an identical characterization to discuss skepticism: At page 6 of his book, Hamer wrote:

"Why is spirituality such a powerful and universal force? Why do so many **people believe in things they cannot see, smell, taste, hear or touch?**" (emphasis added).

48. In Alper's analysis of the personal nature of perception, Alper wrote on page 14, in the Fifth Edition of his Book:

"[I]t's not just the different species that perceive and interpret reality from their own unique perspectives but also each individual within each species Because each **individual perceives the world from his own unique perspective, each of us must consequently maintain our own unique interpretation of reality.**" (emphasis added).

Hamer closely copied Alper's expression at p. 92 of Defendants' Book where he wrote:

"The third key feature of **consciousness is that it is personal. It is yours and yours alone.** You can describe to other people what you see or how you feel, but the sights and feelings themselves are not transferable. This is **why you always experience the world from your own viewpoint**, either as a direct participant or as an onlooker, **not from the perspective of somebody else.**" (emphasis added).

49. On p. 77 of the Fifth Edition of Alper's Book, Alper wrote:

"[I]t's possible for a person to be highly religious (devoted to church doctrine and ritual), though completely aspiritual (incapable of having a spiritual experience). Inversely, **it is equally possible for someone to be highly spiritual, though not at all religious.**" (emphasis added).

On p. 10 of Defendant's Book, Defendant copied this expression as follows:

"Even individuals who dislike all forms of organized religion may have a **strong spiritual capacity** and score high on the self-transcendence scale." (emphasis added).

50. At p. 110 of the Fourth Edition of Alper's Book in his discussion of the behavior of epileptics as evidence of a biological basis for spirituality, Alper wrote:

"Jeffrey Saver and John Rabin of the UCLA Neurologic Research Center found that a **significant number of the world's spiritual prophets and figures had exhibited symptoms indicating they may have suffered from this same type of**

[temporal lobe] epilepsy. The list they composed included, among others, **Joan of Arc, Mohammed, and the Christian apostle Paul.**" (emphasis added).

At p. 131 of Defendants' Book, Hamer copied Alper's expression and wrote:

"What did **the apostle Paul, Muhammad the prophet, Joan of Arc and Fyodor Mikhailovich Dostoyevsy** have in common? All of them were intensely religious. All of them had mystical visions. And some scientists now think all of them may have **owed at least part of their intense feelings of spirituality to temporal lobe epilepsy.**" (emphasis added).

51. On page 42 and page 13 in the Fifth Edition of Alper's Book, Alper wrote:

"[H]ow was it possible that the multitude of **data we incessantly absorb through our sense organs** could so spontaneously arrange itself in such a way as to yield **coherent information** to us? How is it that **this vast stream of stimuli we are constantly being bombarded** with all manages to fall into place in such an intelligible manner?" (emphasis added).

"When we eat an apple, we **"feel"** its texture; we **"smell"** its aroma; we **"taste"** its flavor. Not until we integrate all of these various sense-impressions is our experience transformed into a **coherent perception of the apple as a whole.**" (emphasis added).

On pages 90 and 91 in Defendant's Book, Hamer copies these passages:

"Our brains are **bombarded** with information every second of every minute of the day, day in and day out. There is the data we receive from the outside world through our **senses: sights, sounds, smells, tastes, and touches.**" (emphasis added).

"My brain is certainly no computer. It can't even beat my puny laptop at chess. And yet it receives, sorts, processes, and analyzes this incredible volume of data with the greatest of ease to produce the most remarkable of all products: **a seemingly coherent picture of the world that surrounds me.**" (emphasis added).

52. On p. 169 of the Fourth Edition of Alper's Book, Alper wrote:

"**In the past**, it was considered a mortal sin to believe that the **Earth revolved around the sun. Since such primitive times, science has sent men to the moon and back. In the past, it was considered a sin to perform an autopsy,** that is, to study human anatomy and physiology. **Now, as a result of scientific**

method, we have developed medical technologies that have almost doubled the human life span. And yet, in a society as modern as our own, in the world's most powerful democracy, we still find ourselves battling against the suppressive forces of religious conservatism. We still live in a nation in which the same evolutionary principles that brought us so many of our life enriching technologies struggles to be taught in the classrooms." (emphasis added).

Hamer copies the structure of Alper's expression on pp. 209-210 of Defendant's

Book as follows:

"In the sixteenth century, the church taught that the sun circled the earth; astronomy proved it to be the other way around. In the seventeenth century, infectious diseases were seen as punishments by God; microbiology taught us their true origin. In the nineteenth century, spontaneous generation was accepted dogma; it took Pasteur to show that life comes only from life. In the United States today, the most visible such clash has occurred over the issue of evolution and creationism." (emphasis added).

53. The back jacket of the First Edition of Alper's Book reads as follows:

"From the dawn of our species, every culture—no matter how isolated—has maintained a belief in some sort of a spiritual reality." (emphasis added).

On Page 4 of Defendants' Book, Defendant copied this as follows:

"[the capacity for spirituality] has been evident throughout recorded history in every civilization and culture, in every nook and cranny of the globe ... *Homo sapiens* have had spiritual beliefs since the dawn of our species." (emphasis added).

54. Page 92 of the First Edition of Alper's Book contains the following passage:

"Because the human brain is that much larger and more complex than all the other species, our cognitive capacities are that much more sophisticated. First of all, our brains contain much more storage space, enabling us to retain many more memories."

Page 163 of the Defendants' Book contains the following copied passage:

"Part of the reason for the difference is that **humans have larger brains than animals, allowing them to store more information** and process it more quickly." (emphasis added).

55. In Defendants' Book, Hamer copied the unique structure, topical sequence, and organization of the material in Alper's Book. Defendants' Book has many instances where subject matter was divided into similar chapters to those of Alper's Book. In these instances, Hamer only slightly altered the title of the chapter in attempting to disguise his wholesale copying of Alper's work.

56. Chapter One of the First and Fifth Edition of Alper's Book is entitled **The Spiritual Function**. Chapter One of Defendants' Book is entitled **Spiritual Instinct**. Both chapters discuss the same topics.

57. A sub-chapter of Chapter One in the First and Fifth Edition of Alper's Book is titled **Universal Spiritual Beliefs and Practices**. A sub-chapter of Chapter One in Defendants' Book is titled **A Human Universal**. Both chapters discuss the same topics.

58. On page 78 of the First Edition of Alper's Book, Alper wrote:

"[T]his would suggest ... that we **inherit our spiritual perceptions**, that we are **innately predisposed** to believe in the **existence of a spiritual or transcendental reality**.

Hamer divided Alper's analysis into chapter three of his Book and titled it **An Inherited Predisposition**.

59. On page 110 of the First Edition of Alper's Book, Alper wrote:

"In yet another recent experiment, researchers at University of Pennsylvania, using single positron emission computed tomography, observed changes in the neural activity of Buddhist Monks engaged in the act of meditation."

Hamer divided Alper's analysis into a sub-chapter of Chapter 7 in his book titled **This is Your Brain on Zazen** and Hamer discussed identical subject matter.

60. At p. 110 of the Fourth Edition of Alper's Book, appears the following:

"Studies of twins raised apart suggest that 50 per cent of the extent of our religious interests and attitudes are determined by our genes."

Defendants' Book has a sub-chapter titled **The Minnesota Experiment** which is about the identical subject matter.

61. On page 110 of the Fourth Edition of Alper's Book, Alper wrote:

"Providing yet more tangible data to support a physiological explanation of spiritual experiences, the Canadian psychologist Michael Persinger found that while using a transcranial magnetic stimulator (a helmet that shoots a concentrated magnetic field at a specific region within the brain) to excite his own temporal lobes, he experienced what he described as his first feeling of being at union with God."

Defendants' Book has a sub-chapter beginning on page 135 titled **The God Spot** which dealt with the same subject matter.

62. At page 132 of the First Edition of Alper's Book, Alper wrote:

"By invoking the prayer function, the **"Faith Healer"** is really just facilitating a cerebral catharsis in a person who is stricken by anxiety. In this way, the **"Faith Healer"** works like a placebo." (emphasis added)

Defendants' Book has a sub-chapter containing the same subject matter titled **Faith Healing**.

63. Page 77 of the Fifth Edition of Alper's Book contains a lengthy footnote discussing the distinction between religiosity and spirituality. Page 10 of Defendant's Book contains a subchapter titled **The Difference Between Spirituality and Religiousness** which contains identical subject matter.

64. Hamer also misappropriated the structure and organization of Alper's Book by using several identical quotes of others that were cited in Alper's Book.

65. On page 66 of the Fifth Edition of Alper's Book, the following appears:

"According to the Pulitzer prize-winner E.O. Wilson, 'Religious belief is one of the universals of human behavior, taking recognizable form in every society from hunter-gatherer bands to socialist republics. Its rudiments go back, at least, to the bone altars and funerary rites of Neanderthal man.'"

Page 141 of Defendants' Book contains a copy:

"In his groundbreaking book *On Human Nature*, Wilson lays out the evidence that the predisposition to religious belief has a genetic basis. There is evidence of religious belief more than 60,000 years ago among Neanderthal man. In fact, it is universal; every society, from hunter-gatherers to postindustrial democracies, has had some form of spiritual belief."

66. Upon information and belief, Hamer's copying of Alper's Book has resulted in significant sales of Defendants' Book, widespread media attention for Hamer, and has allowed Hamer to earn significant income for speaking engagements on the copied subject matter.

FIRST CLAIM OF RELIEF

(Copyright Infringement)

67. Alper realleges and incorporates by reference the allegations contained in paragraph 1 to 66 as if fully set forth herein.

68. Alper owns the entire right, title and interest in and to Alper's Book.

69. Alper's Book contains literary work which is original and a proper subject of copyright.

70. Defendant Hamer had access to and copied portions of Alper's Book. Defendant Random House published, distributed, sold, and promoted the infringing book.

71. Defendants' conduct has been in willful violation of Alper's exclusive rights to Alper's Book.

72. Defendants' unauthorized copying is a violation of Alper's exclusive rights under the copyright laws, as enumerated in 17 U.S.C. §101 et seq., and constitutes copyright infringement.

73. As a direct and proximate result of the conduct of Defendants, Alper has been damaged in an amount to be determined at trial.

SECOND CLAIM OF RELIEF

(False Designation of Origin)

74. Alper realleges and incorporates by reference the allegations contained in paragraph 1 to 73 as if fully set forth herein.

75. Defendants falsely designated the origin of Defendant's Book in violation of 15 U.S.C. §1125(a) by affirmatively misrepresenting the book as arising solely from Defendant Hamer and not attributing credit to Alper when Alper's copyrighted work formed a substantial portion of the Defendants' Book.

76. Upon information and belief, the false designation of origin by Defendants has caused or is likely to cause consumer confusion over the source of the Defendants' Book.

77. As a direct and proximate result of the conduct of Defendants, Alper has been damaged in an amount to be determined at trial.

WHEREFORE, Alper respectfully requests that the Court:

1. Declare that Defendants' unauthorized conduct violates Alper's rights under the Copyright Act;
2. Order a full and complete accounting of all income, expenses, profits and other pertinent information directly or indirectly related to the Defendants' Book;
3. Order that Defendants account to Alper for Defendants' profits arising from the foregoing acts of copyright infringement and false designation of origin;
4. Award Alper his actual damages sustained as a result of Defendants' copyright infringement and false designation of origin;
5. Award Alper his costs, including, reasonable attorney's fees and disbursements in this action as provided in 17 U.S.C. §505; and
6. Grant such other relief as is deemed just and proper in the circumstances.

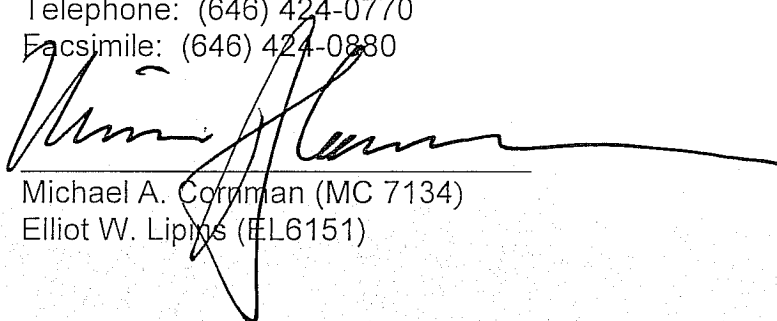
DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury pursuant to the Federal Rules of Civil Procedure, Rule 38.

September 17, 2007

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By



Michael A. Cornman (MC 7134)
Elliot W. Lipins (EL6151)

CERTIFICATE OF SERVICE

It is hereby certified that on September 17, 2007, a true copy of the foregoing Second Amended Complaint and exhibits thereto, has been served by First Class Mail, postage prepaid, upon:

Elizabeth A. McNamara
Linda Jane Steinman
Christopher J. Robinson
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1633 Broadway
New York, NY 10019
212 489-8230

By: 

Elliot W. Lipins